IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

CRIMINAL REVISION APPLICATION NO. 70 OF 2007

Shri Shirish Ramkrishna Kale. ... Applicant.

V/s.

State of Maharashtra & Anr. ... Respondents.

Sanjeev Kadam for the applicant.

K.V.Saste, APP for respondent No.1-State.

M.Unnikrishnan for respondent No.2.

CORAM: V.C.DAGA, J.

DATED: 31st July 2007.

P.C.:

. Heard learned counsel for the applicant and learned counsel for respondent No.2.

. Perused revision petition and documents annexed thereto.

2. This revision is directed against the order dated 27th July, 2006 passed by the Special Judge (ACB/NDPS), Grater Bombay in ACB Special Case No.71/2002, whereby the complaint came to be dismissed and the accused (Applicant No.2 herein) came to acquitted under section 235(1) of Code of Criminal Procedure, 1973 (Cr.P.C.) of the offences punishable under sections 7, 13(1)(d) read with section 13(2) of

the Prevention of Corruption Act, 1988.

Factual Matrix :

3. The factual matrix, in brief, reveals that when the accused was posted as Police Sub-Inspector at Byculla Police Station, on 20th October, 2000, he demanded and attempted to obtain bribe of Rs.50,000/- from the complainant- Mr.Shirish Ramkrishna Kale, as a gratification other than legal remuneration, as a motive or reward for doing or forbearing to do an official act by not registering any criminal case against the complainant and for not arresting him.

4. On 21st October, 2000 at 8.00 p.m., he further agreed to accept a sum of Rs.10,000/- towards part payment of bribe money at Byculla Police Chowky, by abusing his position as a public servant.

5. The prosecution adduced evidence and after appreciation of the evidence, the Special Judge has recorded acquittal of the accused as stated hereinabove.

Submissions :

6. The learned counsel appearing for the applicant submits that the evidence has not been properly appreciated. As against this, learned counsel for respondent No.2 submits that appreciation of evidence has been properly done by the Special Judge. It is,

thus, clear that the rival submissions revolve around the appreciation of evidence only.

7. Learned counsel for respondent No.2 relied upon judgment of the Apex Court in the case of **Thankappan Nadar v. Gopala Krishnan**, (2002) 9 SCC 393 to contend that in a revision application filed by the *de facto* complainant against the acquittal order, Court's jurisdiction under section 397 read with section 401 of Cr.P.C. is limited. The law as enunciated by the Supreme Court does not empower the Court exercising revisional jurisdiction to reappreciate the evidence.

Consideration :

8. Having heard rival parties, it is not in dispute that so far as the demand is concerned, there is absolutely no evidence to corroborate. The complainant himself has led his own oral evidence. Rivalry between the accused and complainant is established on record. The complainant was not believed by the Special Judge.

9. So far as panch-witness is concerned, he has stated that he did go to Chowky but he did not go inside the room and waited near the entrance door outside it. He, thus, could not clearly hear the conversation

between the complainant and the accused. He, therefore, could not corroborate the alleged demand on 21st October, 2000.

10. The complainant claimed to have carried tape recorder with him to record the conversation. However, nothing could be recorded.

11. The contents of the post-trap panchanama have also been doubted by the Special Judge since the panch-witness (P.W.-2) has admitted that the said panchanama was drawn on the basis of statement made by the complainant.

12. All the aforesaid aspects would go to show that for want of evidence and corroboration thereof, the accused came to be acquitted.

13. In the case of **C.P.Fernandes v. Union territory of Goa, Daman & Diu**, AIR 1977 SC 135, the Apex Court has ruled that the Court should not interfere with the trial Court's view unless found to be unreasonable or perverse. If two views are possible on the basis of evidence on record, the higher court should not disturb the findings of the trial Court is the settled law (see **Varghese Thomas v. State of Kerala**, 1977 SC 701).

14. This Court not being a Court of appeal cannot substitute its view in exercise of revisional jurisdiction. Revisional jurisdiction is not only limited in scope but also is discretionary. The Court interferes in the revisional jurisdiction only in exceptional cases of flagrant miscarriage of justice as held by Apex Court in the case of **State of Rajasthan v. Gurucharandas Chaddha, AIR 1979 SC 1895.**

15. Having gone through the evidence available on record, appreciation thereof and the settled legal position, no fault can be found either with the appreciation of evidence or with the view taken. The view taken by the trial Court is reasonable and possible view in the facts and circumstances of the case which can be supported on the basis of evidence on record. No perversity or unreasonable approach on the part of the trial Court could be pointed out by the applicant.

16. In the above view of the matter, no case is made out to entertain this revision application. The same is dismissed in limine with no order as to costs.

JUDGE